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November 29

CONCORD, N.H.

Frederick H. Clarke, Commissioner,
Motor Vehicle Department
State House Annex

Dear Mr. Clarke:

You have inquired what effect an executive pardon of a person whose license had been revoked following his conviction of operating under the influence of intoxicating liquor would have upon his eligibility for restoration of license prior to expiration of the statutory period of mandatory suspension. In my opinion an executive pardon would have no effect upon eligibility for license.

It has been held that an executive pardon to a physician convicted of manslaughter, whose license to practice medicine was revoked because of such conviction, does not restore the right to practice, although it purports to restore all the rights and privileges forfeited by the conviction. 47 A.L.R. 538. A similar result has been reached in the case of an attorney who had been disbarred by reason of a conviction. Id., 543.

I have been unable to discover any decision covering the situation with which you are concerned. A pardoned felon was denied a license to operate a taxicab on the ground that his previous conviction of crime established a bad character. Id. 541. The effect of this decision is weakened, however, by the observation that no forfeiture of the license before the pardon was shown. I believe, nevertheless, that restoration of eligibility for license to operate a motor vehicle can well be argued to be controlled by the same principles as those applied in the cases of the physician and the attorney.

The power of pardoning offenses is vested in the Governor and Council. Constitution of New Hampshire, Part Second, Art. 52. The Legislature may not impair or curtail the power of pardon granted by the Constitution. But a license to operate a motor vehicle is a privilege, not a right (State v. Sterrin, 78 N.H. 222), concerning the eligibility for which the Legislature has established statutory conditions. In determining eligibility of applicants the Commissioner is given broad discretion. R.L. 1942, c. 117, s. 2, 3; c. 118, s. 33. But his discretion is limited by provisions for mandatory suspension. R.L., c. 118, ss. 13, 16. It is

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noted that a person whose license has been revoked or suspended may appeal the decision of the Commissioner to the Superior Court, but that this is not allowed where the suspension or revocation is mandatory. R.L., c. 34. The intent of the law is clearly to make mandatory the revocation of license of one convicted of operating under the influence and his ineligibility for a license for one year thereafter.

The fact that a license is a privilege, to be enjoyed only upon payment of poll tax and by the minimum age requirement. C. 117, ss. 3, 4.

To hold that an executive pardon would restore eligibility for license as such a result would seriously impair, if not destroy, the integrity of the administrative procedure established by the Legislature.

My conclusion is that an executive pardon of a person convicted of operating under the influence of intoxicating liquor would not affect the mandatory provisions for revocation of license.

Very truly yours,

Maurice M. Blodgett
Deputy Attorney General

MMB:FP